BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOHN W. JONES Claimant VS. **UNION PACIFIC MOTOR FREIGHT** Respondent AND **AMERICAN INSURANCE COMPANY** Insurance Carrier AND **KANSAS WORKERS COMPENSATION FUND**	Docket No. 166,264

ORDER

ON the 5th day of April, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Alvin E. Witwer, dated March 3, 1994, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, James M. Sheeley of Kansas City, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Rick Morefield of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by and through its attorney, Scott J. Bloch of Lawrence, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is the same as that listed in Administrative Law Judge Alvin E. Witwer's Award of March 3, 1994.

STIPULATIONS

The Appeals Board hereby adopts the stipulations listed in Administrative Law Judge Alvin E. Witwer's Award of March 3, 1994.

ISSUES

The sole issue to be considered here is whether the parties are governed by the Kansas Workers Compensation Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of arguments by the parties and review of the record, the Appeals Board finds, for the reasons stated below, that the Kansas Workers Compensation Act does not apply to this claim.

The Kansas workers compensation laws apply to injuries arising out of and in the course of employment when either: (1) the injury occurred in Kansas; (2) the principal place of employment was in Kansas; or (3) the contract of employment was made in Kansas. K.S.A. 44-506.

In this case the sole issue is whether claimant's contract of employment was made in Kansas. The injury occurred in Missouri. No contention is made and no evidence was presented which would indicate the principal place of employment was in Kansas.

Evidence relating to claimant's contract of employment indicates claimant was initially hired by respondent in 1968, then Missouri Pacific Truck Lines, Inc., and the initial contract was made in Missouri. At the time he was hired, respondent's offices were in Gardner, Missouri. There appears to be no dispute regarding the location of claimant's initial hiring. Claimant testified that he applied for the employment and was initially hired in Missouri.

Claimant was, however, laid off in 1979 and thereafter worked for Texas Industries for approximately the next seven years. In 1983, claimant began working part time for respondent while he retained his employment with Texas Industries. At approximately this same time, Missouri Pacific merged with Union Pacific and respondent's name became Union Pacific Motor Freight. Respondent's offices were moved to Kansas.

As a member of the Teamster Union, claimant retained seniority rights after he was laid off. Pursuant to the Union contract, respondent was obligated to call claimant back before hiring new employees. Claimant remained obligated to do “extra work” if called to do so. In 1985, the Union contract, including its protection of seniority for laid-off employees was extended for an additional three years.

In January 1987, respondent recalled claimant to regular full-time employment. At the time of the recall, respondent's facilities remained in Kansas. Claimant was notified of the recall by letter from respondent's Kansas facility to claimant's home in Kansas. Claimant returned with full seniority. In November of 1987, respondent moved its facilities back to Missouri. Claimant thereafter worked out of the Missouri facility and he was injured in Missouri on March 19, 1992.

From this history of employment, the Appeals Board finds that claimant's contract of employment was made in Missouri in 1968 and continued uninterrupted to the time of the accident in 1992. While we find no Kansas case directly on point, the general rule of law in other contexts and other jurisdictions is that a laid-off employee remains an employee. See Darden v. U.S. Steel Corp., 830 P.2d 1116 (11th Cir. 1987); International Alliance of Theatrical Stage Employees v. Gulf International Cinema Corp., 568 F. Supp. 1396 (E. D. La. 1983). There appears to be nothing unique about the present context which would require a different result. The rule of law giving Kansas jurisdiction when the contract of employment is made in Kansas is a technical one intended to grant jurisdiction

consistent with due process requirements. The Appeals Board concludes that the contract was technically created in Missouri. The injury occurred in Missouri and Kansas was not the principal place of employment. Kansas does not, therefore, have jurisdiction.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision of Award of Administrative Law Judge Alvin E. Witwer dated March 3, 1994, is affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Alvin E. Witwer, Administrative Law Judge
George Gomez, Director